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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,409	03/21/2006	Michal Kalavsky	ZITP03P01030	2678
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EXAMINER				
FREAY, CHARLES GRANT				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/565,409

**Applicant(s)**

KALAVSKY ET AL.

**Examiner**

Charles G. Freay

**Art Unit**

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-22, 24-28 and 30-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-22, 24, 26-28, 34-36 and 39-41 is/are rejected.
- 7) ☒ Claim(s) 25, 30-33, 37 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to the amendment of September 9, 2009. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

#### ***Claim Objections***

Claim 27 is objected to because of the following informalities: much if the claim material is set forth in the material newly added to claim 20 from which it depends. The only material/limitation added to claim 20 is the use of plural O-ring. The examiner would suggest rewriting the claim to say "...comprising more than one O-ring." Appropriate correction is required.

Claims 31 and 32 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims each depend from now canceled claim 29.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim (claim 26) sets forth that there is an O-ring holding the radial sliding bearing and also that the radial sliding bearing has a liquid seal. The disclosure does not set forth separate O-ring seals and liquid seals for the bearing. The claim is confusing because it is referring to the same element twice.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 20, 21, 24, 28, 34, 35, 39 and 40 are rejected under 35 U.S.C. 102(c) as being anticipated by Kalavsky (USPN 7,131,823).

Kalavsky discloses a pump having a wet running motor 22, 23 including a rotor 22 operating in a pump chamber defined by a shield 4,9 and a housing 13 which has a stationary shaft 18 mounted therein. The rotor has an impeller 17 which is mounted

rotatably around the shaft by axial and radial bearings 27. The impeller pump is connected to and used with a dishwasher (col. 1 line 26).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 20-22, 24, 28, 34, 35 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon (USPN 3,572,982) in view of Ushikoshi (USPN 4,762,461).

Kozdon discloses a pump having a pump chamber formed by a front housing shell and a pot shaped shield 8, 7. The commutated (see abstract) motor has a rotor within the pump chamber which has a pump impeller 3 attached to the front of it. But Kozdon does not disclose the rotor and impeller rotating on a fixed shaft mounted to the shield and there being an axial bearing. Ushikoshi et al discloses a similar leakless pump having a pump chamber holding an integral pump impeller and a rotor having magnets thereon which is rotatable on a fixed shaft 6 and having radial 8a, 8b and axial 7 bearings. At the time of the invention it would have been obvious to one of ordinary skill in the art to substitute a fixed shaft support arrangement such as Ushikoshi for the rotating shaft arrangement of Kozdon in order to allow for the use of larger and more durable support bearings.

With regards to claim 39 the pump is "suitable" for use with an appliance.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon in view of Ushikoshi et al as applied to claim 20 above, and further in view of Bowes et al (USPN 5,708,313).

As set forth above Kozdon in view of Ushikoshi et al discloses the invention substantially as claimed but does not disclose the rotor being encased in plastic. Bowes et al disclose a similar impeller and rotor assembly having a rotor encased in plastic

(see col. 4 lns, 22-28). At the time of the invention it would have been obvious to one of ordinary skill in the art to encase the Kozdon rotor in plastic as taught by Bowes et al in order to protect the magnets and create a more durable system.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kozdon in view of Ushikoshi et al as applied to claim 20 above, and further in view of Wright (USPN 6,191,506).

As set forth above Kozdon in view of Ushikoshi et al discloses the invention substantially as claimed but does not disclose a circuit board, a spring contact and the stator being connected to the circuit board by the spring contact. Wright discloses an electric motor having a circuit board (40), a spring contact (Fig. 8) and the stator 14 being connected to the circuit board by the spring contact. At the time of the invention it would have been obvious to one of ordinary skill in the art to provide a circuit board connected to the stator of the Kozdon electric motor and connected by a spring contact, as taught by Wright, in order to provide a mechanism for controlling and providing the power and current to the motor.

***Allowable Subject Matter***

Claims 25, 30, 33, 37 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26 and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed September 9, 2009 have been fully considered but they are not persuasive. The applicant makes the following arguments, that there is nothing that teaches or suggest the bearings of Ushikoshi are more durable (or larger) than the bearings of Kozdon and there is no suggestion to combine, and that Kozdon is silent with regards to suitability for use with a dishwasher.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references teach of a wet running rotor/impeller element which is rotatably supported by a casing and a shield. In Kozdon the rotor assembly is supported by pins 4,6 which as shown in the figures are relatively same compared to the body of the rotor. In Ushikoshi et al the stationary shaft allows for the use of bearing elements 8a and 8b which are placed within the much larger body of the rotor. Additionally the Ushikoshi et al arrangement allows



for the inclusion of an axial bearing element 7, 8a. One of ordinary skill in the art would understand that the use of the stationary shaft extending through the rotor allows for the use of larger radial support bearings as opposed to allowing the pin elements of Kozdon support the rotor. Furthermore, it allows for the use of an axial bearing which the pin elements and rotor assembly of Kozdon provide no teaching of.

With regards to there being no mention within Kozdon of there being a use with an appliance the examiner must respectfully disagree that this implies that the device is not suitable for use with a dishwasher. The Kozdon pump discloses a hermetically sealed impeller pump and would clearly be capable of use and suitable, in view of its sealed structure, for use with a dishwasher.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sargeant et al discloses a wet-running impeller pump mounted to a dishwasher.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/  
Primary Examiner  
Art Unit 3746

CGF  
November 6, 2009